

STATEMENT OF THE FRIEDMAN ADVISORY PANEL

We write separately in order to comment on the task that confronted the District Attorney and her Review Team in this matter. We thought it appropriate to express our views on the manner in which they approached that task and the conclusions that they reached. Also, it is important that the limited role of the Advisory Panel be clearly understood.

The Friedman case is old. The facts date back more than twenty-five years. Because it was resolved by the guilty pleas of Arnold and Jesse Friedman in 1988, there was never a public trial, and there remains only an incomplete record of what witnesses told the police, the prosecutor, and the grand jury. The candor, memories, and reliability of the witnesses were not tested by cross-examination when the defendants had the opportunity to challenge the witnesses' testimony, and it is impossible to know the full contours of what the prosecution's case or the defense case might have revealed. Now, decades have passed. The Review Team confronted the predictable inability of investigators (all of whom have retired) to find relevant records or to reconstruct their investigation, and the natural deterioration of human memory. The effort was further complicated by the poor practices of the Nassau County Police Department, which did not document the investigation in a way that would allow the progress or sequence of the investigative steps to be understood after the fact.

Beyond these problems, though, the nature of the case presented some extraordinary challenges. The victims who reported sexual abuse to the police and testified about it in the grand jury were children when the events took place; now, they are adults in their 30s, and many of them have families and careers to protect. They are understandably reluctant to revisit a tumultuous and very emotional chapter of their lives. As detailed in the District Attorney's Report, many of the victims did not respond to repeated requests to speak with the Review Team. This does not mean that they were never abused or that Jesse Friedman was not involved. It simply means that they do not want to speak about their recollections after the passage of twenty-five years. Some victims did come forward now, and they reiterated the previous accusations. Others have made conflicting statements,

and some claim to have no present ability to recall anything. None of this surprises us. As the Report makes clear, the witnesses have differing motives and abilities to recall the events, and the circumstances under which they were asked to do so varied widely.

Ultimately, the Review Team made the judgment that it would not seek compulsory process to force victims to cooperate, or to provide testimony under oath. The Advisory Panel agreed with this judgment: forcing witnesses to come to terms with these events yet again would be a painful experience for people who thought that the whole matter was behind them, and there was little assurance that compelled testimony could clarify a disputed issue or yield a substantial amount of credible evidence. Crimes such as those alleged here—involving child witnesses and sexual misconduct—are difficult to investigate even when recollections are fresh; when the memories are decades old it is extremely difficult to develop a factual record that is fully reliable or entirely complete.

What is clear to us is that the Review Team did an excellent job under difficult circumstances. The District Attorney called on some of her most senior and trusted prosecutors to lead the review, and we saw first-hand that they approached their work with no preconceived notions about Jesse Friedman's guilt, and no agenda to preserve his conviction. Indeed, if the evidence had convinced them there was a reasonable probability Jesse Friedman was not guilty, or there was new evidence that met even the most lenient legal standard available for relief, we have no doubt the Review Team was prepared to recommend without reservation that Friedman's conviction be overturned. But that was not how the facts played out for the Review Team. After painstaking efforts and discussions that consumed many hundreds of hours, the Review Team reached the judgments that Jesse Friedman pleaded guilty because in fact he was guilty, and that the circumstances do not warrant relief. The bases for these judgments are set forth in the Review Team's comprehensive report of their reinvestigation. Having watched and reviewed the process as it took place, all of the members of the Advisory Panel are satisfied that the Report represents the considered, good-faith, and careful analysis of experienced prosecutors and investigators who wanted only to reach whatever result was warranted by the facts and the law.

As the Report makes clear, the primary focus of the Advisory Panel was on “process” issues: Was the Review Team proceeding in good faith? Was it pursuing all reasonable avenues to gather evidence? Was it considering the right questions? Was it considering all viable claims that might undermine the conviction? Was it making reasonable inferences from the evidence? That remained our focus during the entire process. It was not our function to conduct the reinvestigation, to review the entire factual record (some of which was unavailable to us as a matter of law), or to assess the credibility of witnesses. These responsibilities belonged to the District Attorney and the Review Team. However, the members of the Advisory Panel guided the process and provided their experience and expertise regarding victims of crime, police procedure, and conviction integrity review policies and practices. The Panel members also did their best to provide counsel to investigators in terms of the overall progress of the investigation. The Panel had no predetermined views, and the counsel it offered was not the product of a majority vote. While it was not the role of the Advisory Panel to make an ultimate judgment about Jesse Friedman’s culpability or make factual findings, we do have an obligation to express a view as to whether we believe the conclusions expressed in the Review Team’s Report are reasonable and supported by the evidence it cites. We think they are.

One final aspect of this case deserves special comment. The Second Circuit called for a reinvestigation of this case based, in large part, on information revealed in the movie *Capturing the Friedmans*. *Capturing the Friedmans* was a provocative and entertaining movie, but it was not an exhaustive account of the entire case against Jesse Friedman. The Review Team had to go behind the excerpts and sound bites that the producers used in the film and other “reels” and exhibits the producers have produced over the course of this re-investigation. After several failed attempts to get relevant information from the producers, the Review Team, with the support of the Advisory Panel, entered into an agreement with them regarding disclosure in an effort to get as much evidence as possible, and prevent premature public release of sensitive information about the witnesses and their families.

It is simply a fact, however, that before the re-investigation was complete a public relations campaign was launched attacking the original prosecution. In the context of this campaign the producers approached victims and witnesses to

encourage them to take back their incriminating testimony. These actions presented difficulties for the Review Team when assessing the credibility of witnesses, and in some cases, being able to speak with witnesses at all. Similarly, the protracted discussions and negotiations with the film producers about sharing evidence also delayed the re-investigation.

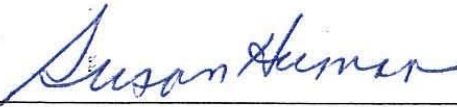
Of course, it is appropriate that Jesse Friedman's supporters, including the film's producers, gather facts, advocate on Jesse's behalf, and provoke public discussion and debate about the case. But artists and advocates use different methods, make different judgments, and apply different standards than those that public prosecutors must employ. It was the role of the District Attorney and her team to follow the facts, without fear or favor, and to make the best judgment they could under the circumstances presented to them, consistent with the law and the evidence. We believe that is what they did in this case.

Respectfully submitted:



Mark F. Pomerantz, Chairman

Dated: 6-15-13



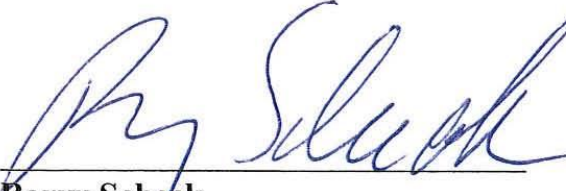
Susan Herman

Dated: 6-15-13



Patrick J. Harnett

Dated: 6/15/13



Barry Scheck

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